

1-1-1994

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Ivana Nizich

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Ivana Nizich, *Violations of the Rules of War by Bosnian Croat and Muslim Forces in Bosnia-Herzegovina*, 5 Hastings Women's L.J. 25 (1994).

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Violations of the Rules of War by Bosnian Croat and Muslim Forces in Bosnia-Herzegovina

*By Ivana Nizich**

INTRODUCTION

Bosnian Serb troops and forces from Serbia proper are responsible for most violations of humanitarian law and human rights in Bosnia-Herzegovina (Bosnia). The Serbs' policy of "ethnic cleansing"¹ in Bosnia and Croatia has been systematically executed by Serbian civilian and military authorities. It would be a mistake to say that all parties to the conflict are equally responsible for the violations that have been perpetrated in the Bosnian war. Nevertheless, the mostly Muslim forces of the Bosnian government and the Bosnian Croat militia have also been responsible for abuses against Serbian, Muslim, and Croatian civilians, albeit on a smaller scale than Bosnian Serb forces. When fighting between Bosnian Croats and Muslims gained momentum in early 1993, Croatian and Muslim civilians and disarmed combatants were victims of human rights abuses. This essay deals with abuses perpetrated by Bosnian Croat and Muslim forces during the battles between the two groups in late 1992 and 1993.

This essay also asserts that the increase in abuses by Bosnian Croat and Muslim troops was due, at least in part, to the international community's apathy toward violations perpetrated by Serbian forces since the beginning of the war in Croatia and Bosnia-Herzegovina. Because little, if anything, was done to halt or punish Serbian forces for abuses associated with the policy of "ethnic cleansing," both Bosnian Croat and Muslim troops saw fit to adopt similar measures in pursuit of their military and political aims.²

* The author is a research associate at Human Rights Watch/Helsinki (formerly Helsinki Watch). Helsinki Watch was formed in 1978 to monitor and promote domestic and international compliance with the human rights provisions of the 1975 Helsinki Accords.

1. The main objective of "ethnic cleansing" is the removal of an entire group from a given area through murder, population exchanges, or forced displacement.

2. For accounts of abuses perpetrated by Bosnian Serb forces, see HELSINKI WATCH, A DIVISION OF HUMAN RIGHTS WATCH, WAR CRIMES IN BOSNIA-HERCEGOVINA (1992) [hereinafter WATCH REPORT, VOL. I] and HELSINKI WATCH, A DIVISION OF HUMAN RIGHTS WATCH, WAR CRIMES IN BOSNIA-HERCEGOVINA VOLUME II (1993) [hereinafter WATCH

While the perpetrators of atrocities in Bosnia ultimately are responsible for their crimes, the international community deserves criticism for allowing the blatant disregard for human life to continue. By giving priority to the signing of a peace accord but not simultaneously giving equal importance to the cessation of all abuses, the United Nations, the European Union, and the United States have, in effect, sanctioned the use of force and the perpetration of war crimes and crimes against humanity as acceptable methods through which one can achieve one's military aims and political goals. As a result, Bosnian Serb, Croat, and Muslim forces have sought to strengthen their positions at the bargaining table by gaining control of as much territory as possible, usually at the expense of the civilian population.

This essay gives a brief overview of the conflict between Bosnian Croats and Muslims. It then delineates the types of violations perpetrated by each side, citing specific cases of abuse under each category. The last section of this article examines the international community's indecisive position toward the Bosnian war and its consequences for human rights in the former Yugoslavia and international humanitarian law in general.

I. BACKGROUND

Once allies against Bosnian Serb forces and the Yugoslavian Army in Bosnia-Herzegovina, Bosnian Croat troops, (otherwise known as the HVO³), and the predominantly Muslim soldiers of the Bosnian Army turned their guns against one another in 1993, committing crimes against the civilian population in the process. As of this writing, Bosnian Croats and Muslims have ceased their fighting and reconciled as allies, forming a federation within Bosnia. However, those responsible for abuses perpetrated during the course of the Croat-Muslim fighting should be held accountable for their crimes.

Although most Croats fighting against Muslim troops were from Bosnia-Herzegovina, members of the Croatian Army also fought on behalf of HVO troops in Bosnia and the Croatian government provided military and other support to the HVO. Croatian President Franjo Tudjman has made no secret that he would like to annex or incorporate into Croatia proper the predominantly Croat-populated region of Herzegovina in Bosnia. Given its support of HVO forces, Croatia also is a party to the conflict in

REPORT, VOL. II].

3. The Croatian Defense Council, *Hrvatsko Vijeće Obrane* - HVO is the military force of the Bosnian Croats and will be referred to by its Croatian acronym, HVO, hereinafter. Although Croats and Serbs continue to serve in the Bosnian Army, the military forces of the Bosnian government are overwhelmingly Muslim, particularly in south-central Bosnia. The terms "Bosnian Army" and "Bosnian Muslim forces" will be used interchangeably. Various Muslim and Croatian paramilitary groups conduct military operations in conjunction with, or in addition to, the Bosnian Army and HVO, respectively.

Bosnia and is, at least in part, responsible for abuses perpetrated by the HVO in Bosnia.⁴

When war broke out in Bosnia, Croatia funnelled arms to Muslims and Croats in Bosnia. At that time, HVO forces engaged Serbian forces in battles in western and northern Bosnia. In contrast, many Muslim areas in eastern and northwestern Bosnia were taken over by Serbian forces with little, if any, resistance by the Muslims. Bosnian Croats grew increasingly resentful of Muslims, claiming that the Muslims were avoiding battle, leaving the Croats to fight for them. At the same time, Muslims grew angry at the Bosnian Croats, claiming that the Bosnian Croats were disregarding the authority of the Sarajevo-based Bosnian government in areas where Croats were in the majority or where the HVO maintained a strong military presence. Also, during the early stages of the war, Bosnian Muslim paramilitary groups and Bosnian Croat forces in and around Sarajevo squabbled over the spoils of black market activities.

Resentment and distrust eventually led to armed conflict between the two groups. In October 1992, Bosnian Croat forces launched an attack against Bosnian Army positions in the town of Prozor, forcibly displacing a large portion of the town's Muslim population. Sporadic gun battles between Muslim and Croatian forces continued throughout late 1992 and early 1993.

Already tense relations between Bosnian Croats and Muslims were exacerbated after a peace proposal was put forward by then-United Nations mediator Cyrus Vance and his counterpart from the European Union, Lord David Owen (the Vance-Owen proposal). The proposal, presented in January 1993, sought to reconstitute Bosnia-Herzegovina as a loose confederation of ten separate provinces, nine of which would be under the primary control of either Serbs, Croats, or Muslims. Only Sarajevo would be declared a "free zone." A transitional, multi-ethnic council would govern the confederation until elections took place. Under the terms of the Vance-Owen proposal, Bosnian Croats would have gained control of some areas in which they either were not in the majority or which contained a substantial Muslim minority. Although the Vance-Owen plan was eventually rejected by the Bosnian Serbs, it was used by the Bosnian Croats

4. International humanitarian law distinguishes international and non-international (internal) armed conflicts. Because of the direct involvement of forces from the Yugoslavian/Serbian and Croatian governments, Human Rights Watch/Helsinki has treated the conflict as international in character, therefore allowing for the applicability of humanitarian law governing such conflicts. *See, e.g.*, The 1949 Geneva Conventions and the First Protocol Additional to the Geneva Conventions. Although forces belonging to the Yugoslavian/Serbian and Croatian governments have nominally withdrawn from Bosnia-Herzegovina, the direct military, economic, and political aid provided by both governments to their surrogate forces in Bosnia-Herzegovina continues to make them parties to the conflict.

to justify the assumption of control over areas such as Mostar and Travnik. Bosnian Muslims resisted such control and "all-out war" eventually broke out between the two groups in early May 1993.

Bosnian Croat forces were responsible for most of the abuses committed in May and June 1993. After Bosnian Muslim forces launched an offensive against HVO positions in central Bosnia in late June, however, Bosnian government and Muslim paramilitary troops began to perpetrate crimes similar to those of their Bosnian Croat counterparts. Both Croatian and Muslim forces have deliberately executed civilians and disarmed combatants, arbitrarily arrested individuals belonging to the opposing ethnic group, mistreated prisoners in detention, and forced the displacement of tens — possibly hundreds — of thousands of persons. Muslims in western Herzegovina have been arbitrarily detained, tortured and held hostage by Croatian troops. Croats in Zenica, Jablanica, and Konjic have been subjected to similar treatment. In addition to violations of the rules of war during the course of armed conflict, both Bosnian Croat and Muslim authorities have committed abuses against members of the opposing ethnic group in areas under their controls.

Bosnian Croats have lost most of their strongholds in central Bosnia as a result of the Bosnian Army offensive. Since May 1993, HVO forces have lost control of the towns of Bugojno, Travnik, and Fojnica. As is the case in the eastern Bosnian pockets of Srebrenica, Žepa, and Goražde, where Muslims are under siege by Serbian forces, Bosnian Croats remain encircled by Muslim forces in small, besieged pockets in the municipalities of Kiseljak, Žepče, Kreševo, Busovača, Vitez, and Novi Travnik. Similarly, Croatian forces laid waste to the Muslim-controlled area of Mostar, including the right bank and part of the left bank of the Neretva River.

In February and March 1994, the United States brokered a peace agreement between the predominantly Muslim Bosnian government and the government of the Republic of Croatia and its patron, the Bosnian Croats. According to the terms of the agreement, the Bosnian Croats and Muslims are to form a federation within Bosnia-Herzegovina, and governance of Bosnian Croat-held and Muslim-held territories is to be shared between the two groups. Also, under the terms of the United States-brokered agreement, Croatia and Bosnia have agreed to form a confederation.

Although the details of the Muslim-Croat federation and confederation need to be resolved, the rapprochement between the two groups has had a positive effect on the human rights situation in areas of southwestern and central Bosnia. Fighting between the two groups has ceased and human rights violations have decreased dramatically. However, Muslims continue to be evicted from their homes in the Croatian-controlled area of Mostar and neither Bosnian Muslim nor Croatian officials is working to facilitate

the return of the displaced to their homes. Moreover, the Bosnian government and, particularly, the Bosnian Croat authorities have not vigorously sought to punish members of their armed forces who are otherwise responsible for past human rights abuses against civilians or disarmed combatants.

The alarmingly brutal abuses committed by Croatians against Muslims in Bosnia have been widely publicized, while abuses committed by Muslim forces in central Bosnia against Croats and Serbs have been less publicized and require further investigation. The following examples of violations of the rules of war were documented by representatives of Human Rights Watch/Helsinki during the summer of 1993, when fighting between Bosnian Croats and Muslims in central Bosnia was at its fiercest.⁵

II. SUMMARY EXECUTIONS

The summary execution of civilians and persons *hors de combat* is prohibited under Article 75 of Protocol Additional to the Geneva Conventions of 12 August 1949.⁶ Under Article 85(3)(e) of Geneva Protocol I and Article 147 of the Geneva Convention Relative to the Protection of Civilians in Time of War of August 12, 1949, summary execution of civilians and persons *hors de combat* is considered a "grave breach."⁷ Moreover, Article 13 of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949, states:

Prisoners of war must at all times be humanely treated. Any unlawful omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody

5. This article is based on the findings of a mission to Bosnia-Herzegovina and Croatia by Human Rights Watch/Helsinki representatives from May to September 1993, and is adapted, in part, from a September 1993 Human Rights Watch/Helsinki report entitled *Bosnia-Herzegovina: Abuses by Bosnian Croat and Muslim Forces in Central and Southwestern Bosnia-Herzegovina*, HUMAN RIGHTS WATCH/HELSINKI REPORT (Human Rights Watch/Helsinki, New York, N.Y.), Sept. 1993 [hereinafter *Abuses*]. Unless otherwise cited to an outside source, all narratives and accounts of abuses in Bosnia-Herzegovina contained in this article are documented in full in that report. In addition, a thorough explication of provisions of international humanitarian law cited in the footnotes to this article appear in WATCH REPORT, VOL. I and WATCH REPORT, VOL. II, *supra* note 2. Although the author of this article is also the principal author of the three aforementioned Human Rights Watch/Helsinki reports, Regan Ralph, staff attorney at the Women's Rights Project of Human Rights Watch/Helsinki, wrote the section in WATCH REPORT, VOL. II, explaining rape as a war crime. The section on rape also appears in this article.

6. Protocol of Victims of International Armed Conflicts, June 8, 1977, art. 75, 1125 U.N.T.S. 3, 37 [hereinafter Geneva Protocol I].

7. Geneva Convention IV, Red Cross Conventions, Protection of Civilians in War, Aug. 12, 1949, art. 147, 6 U.S.T. 3516, 3618, 75 U.N.T.S. 287, 388 [hereinafter Fourth Geneva Convention].

is prohibited, and will be regarded as a serious breach of the present Convention.⁸

Prisoners are to be treated humanely "from the time they fall into the power of the enemy and until their final release and repatriation."⁹ After the combatants are rendered unable to bear arms (as a consequence of surrender, wounds, illness, or other causes) these persons no longer constitute a legitimate military threat and, therefore, cannot be the subject of attack, must be treated humanely, and cannot be summarily executed.

These provisions of the Geneva Conventions and their first Protocol were ignored by Bosnian Croat and Muslim troops, particularly when fighting between the two groups was at its fiercest in 1993.

A. BY BOSNIAN CROAT FORCES

HVO troops are responsible for two brutal massacres involving scores of Muslim civilians in the village of Ahmići (within the municipality of Vitez) and in the village of Stupni Do (within the municipality of Vareš). Bosnian Croat troops also are implicated in the perpetration of massacres in Kakanj, but evidence of HVO's involvement has not yet been thoroughly investigated.

- On April 16, 1993, HVO forces attacked the predominantly Muslim village of Ahmići, summarily executed scores of unarmed civilians, and destroyed all Muslim homes. A detailed investigation was conducted by the field staff of Tadeusz Mazowiecki, Special Rapporteur of the United Nations Commission on Human Rights, shortly after the massacre took place. According to the Special Rapporteur's report, twenty fleeing civilians were ambushed and shot at close range, while others were summarily executed in their homes. The bodies of entire families were burnt beyond recognition. Of the eighty-nine bodies that had been recovered from the village in mid-May 1993, most were those of elderly people, women, children, and infants. All the homes belonging to Muslims in the village were burned, while the Croatian homes remained intact.¹⁰ To date, the HVO has not taken steps

8. Geneva Convention III, Red Cross Conventions, Treatment of Prisoners of War, Aug. 12, 1949, art. 13, 6 U.S.T. 3316, 3328, 75 U.N.T.S. 135, 146 [hereinafter Third Geneva Convention].

9. *Id.* at art. 5, 6 U.S.T. at 3322, 75 U.N.T.S. at 140.

10. See *Situation on Human Rights in the Territory of the Former Yugoslavia: Second periodic report on the situation of human rights in the territory of the former Yugoslavia submitted by Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 32 of Commission resolution 1993/7 of 23 February 1993*, U.N.

to punish the perpetrators of this crime, although it has promised to do so.¹¹

- On October 23, 1993, a group of thirty to forty Bosnian Croat soldiers summarily executed at least nineteen of the two hundred fifty villagers of Stupni Do. Most of the victims appeared to have been civilians, including children. The following day, the village was set ablaze and many of the victims' bodies burned within the fifty-two razed houses. HVO troops obstructed entrance to the village until October 26, 1993, when the United Nations and members of the European Community Monitoring Mission were able to reach the village and document the atrocities. The United Nations concluded that Bosnian Croat soldiers had attacked the village in retaliation for a Bosnian Army offensive one week earlier, in which Muslim soldiers seized the village of Kopjari, about two miles from Stupni Do, and drove out Croatian families.¹²

B. BY BOSNIAN GOVERNMENT AND MUSLIM TROOPS

Since the summer of 1993, Bosnian Army and Muslim armed forces appear to have summarily executed civilians in smaller numbers but with greater frequency than HVO troops.

- On April 16, 1993, Bosnian government troops and Muslim paramilitary forces attacked — and a battle between Muslim and Croatian forces ensued — in the Muslim and Croatian village of Trusina (within the municipality of Konjic). During the battle, between five and ten Croatian women and approximately ten Croatian children were captured by the Muslim troops. The captives were taken by approximately sixty Muslim soldiers to a home on the periphery of the village, in an area known as Gaj, where they saw disarmed HVO soldiers who had been captured by the Muslim forces. The women and children were told to stand behind a barn. They then heard volleys of bullets being shot off. After the shooting ceased, the Muslim soldiers summoned the women and

Commission on Human Rights, at 4-5, U.N. Doc. E/CN.4/1994/4 (1993) [hereinafter *U.N. Report on Human Rights in Former Yugoslavia*].

11. *Abuses*, *supra* note 5, at 3.

12. John F. Burns, *U.N.'s Grim Documentation At a Massacre Site in Bosnia*, N.Y. TIMES, Oct. 28, 1993, at A1.

children to the front of the barn, where they saw that five men had been summarily executed. Some of those executed were male relatives of the captured women and children.¹³

- During a battle between Muslim and Croatian soldiers in the village of Doljani (within the municipality of Jablanica) on July 27, 1993, approximately five armed and uniformed HVO soldiers, an armed male civilian and five unarmed civilians fled the village. En route, they reached a meadow, where they heard someone yelling — ordering them to lie on the ground. Human Rights Watch/Helsinki representatives interviewed K.S., a 56-year-old housewife from Doljani, who testified that the group dropped to the ground and was then shot at from two opposite directions, from a distance of approximately twenty meters on each side. Two witnesses interviewed by Human Rights Watch/Helsinki claimed that the Bosnian Croat combatants did not return fire nor did they provoke the attack in any way. After the shooting stopped, one of the civilians fled and managed to escape. Someone then ordered the wounded to remain on the ground. Those who were not wounded were told to stand up and were eventually taken to a house, by two of the twenty Muslim soldiers, where they were imprisoned on the ground floor. The wounded who remained in the meadow were later found dead; the corpse of a wounded HVO soldier, Željko Miškić, reportedly was found with his hands tied behind his back and disemboweled, suggesting that some of the wounded may have been tortured before execution.¹⁴

- Fighting between Muslims and Croats erupted in the Konjic area in mid-April 1993. During the attacks, most of the Serbs and Croats in the area fled to the HVO-controlled village of Donje Selo, near the town of Konjic. According to witnesses interviewed by Human Rights Watch/Helsinki, the battle for Donje Selo lasted two days, at which point Muslim forces issued an ultimatum that all those who remained in Donje Selo were to come to the village of Homolje. After the local representative com-

13. *Abuses*, *supra* note 5, at 10-11.

14. *Id.* at 11-12.

plained that the elderly could not endure the thirty-minute walk to Homolje, Muslim forces came to Donje Selo, lined people up against a wall, robbed them of their personal belongings and money, and threatened to kill them. According to one witness, a Serbian man between the age of seventy and eighty was beaten. The witness also reported that the men were divided from the women and taken toward Homolje, where they spent the night. En route to Homolje, in the village of Breber, approximately fifty additional soldiers joined the fifteen Muslim soldiers accompanying the male prisoners. The column of men were then stopped along the road and the Serbian prisoners were ordered to step forward. Between nine and twelve men complied. The rest of the men were told to cross over to the other side of the road and to lie down facing away from the road. The Serbs who stepped forward were taken to the other side of the road. The witness then reported hearing screams and shooting. Because the prisoners on the other side of the road were not allowed to look up or behind them, they could not confirm if all the Serbian prisoners had been killed or wounded, but they presumed that all the Serbian prisoners on the other side of the road had been executed.¹⁵

- Officials from the United Nations High Commissioner for Refugees (UNHCR) have reported that, on April 24, 1993, after a brief battle between Muslim irregular and Croatian forces in the hamlet of Miletići, Muslim forces tortured and then killed four Croatian civilians they had detained in the village, twenty-five kilometers northwest of Zenica.¹⁶ Reuters reported that five Croats were killed and that one victim had been blown up by a hand grenade while tied to a chair.¹⁷ Reportedly, four of the victims were members of the same family.¹⁸

- European monitors confirmed that members of the Bosnian Army were probably responsible for the killing of over thirty-five Croats — most of them civilians — in the

15. *Id.* at 12.

16. AMNESTY INT'L, URGENT ACTION, EUR 43/12/93, May 14, 1993.

17. Douglas Hamilton, *Some Go Home, Some Flee in Chaos of Bosnian War*, The Reuter Library Report, Reuters Information Services, Inc., Apr. 30, 1993.

18. *Id.*

village of Uzdol, east of Prozor, on September 14, 1993.¹⁹

III. FORCED DISPLACEMENT, ARBITRARY ARREST, AND DETENTION

Article 49 of the Fourth Geneva Convention states:

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of motive.²⁰

There are only two exceptions to the prohibition on displacement of civilians for war-related reasons: for their security or for imperative military reasons.²¹ "Imperative military reasons" require "the most meticulous assessment of the circumstances" because such rationales are so capable of abuse.²² The International Committee of the Red Cross has stated:

Clearly, imperative military reasons cannot be justified by political motives. For example, it would be prohibited to move a population in order to exercise more effective control over a dissident ethnic group.²³

Mass relocation or capture of civilians for the purpose of changing the ethnic composition of territory in order to later justify annexation is a political, not a military, move and does not qualify as an "imperative military reason." Destruction of civilian homes as a means to force those civilians to move is as illegal as a direct order to move.

Article 75 of Geneva Protocol I and Article 147 of the Fourth Geneva Convention expressly forbid the taking of hostages.²⁴ "Hostages" are defined by the 1977 International Committee of the Red Cross Commentary as follows:

19. David B. Ottaway, *U.N. Troops Step Between Croats and Serbs*, WASH. POST, Sept. 16, 1993, at A24.

20. Fourth Geneva Convention, *supra* note 7, art. 49, 6 U.S.T. at 3548, 75 U.N.T.S. at 318.

21. WATCH REPORT, VOL. II, *supra* note 2, at 10 n.6.

22. *Id.*

23. Commentary on the Additional Protocols of 8 June 1977 to the Geneva Convention of 12 August 1949, International Committee of the Red Cross, at 1472-73 [hereinafter 1977 ICRC Commentary].

24. Geneva Protocol I, *supra* note 6, art. 75, 1125 U.N.T.S. at 37; Fourth Geneva Convention, *supra* note 7, art. 147, 6 U.S.T. at 3618, 75 U.N.T.S. at 388.

[H]ostages are persons who find themselves, willingly or unwillingly, in the power of the enemy and who answer with their freedom or their life for compliance with the orders of the latter and for upholding the security of its armed forces.²⁵

Civilians captured and held for exchange purposes are hostages, since their freedom is conditioned on compliance with their captors' orders.

During the battles for territory in central Bosnia in 1993, both Muslim and Bosnian Croat forces captured and arbitrarily detained members of the opposing "enemy" group. Neither Bosnian Croats nor Muslim forces were willing to release prisoners, most of whom were civilians, hoping to exchange them for members held by the other side. Such a practice amounts to hostage-taking by each side.

A. BY BOSNIAN CROAT FORCES

Full-scale fighting between Bosnian Army and HVO forces in Mostar began on May 9, 1993. It appears that HVO forces orchestrated the attack to justify the arbitrary arrest and detention of thousands of Muslim men, women, and children. Most of those arrested in May were taken into custody solely on the basis of their ethnic and religious — not military — affiliation.

Approximately 2,000 men, women and children were arbitrarily arrested in May 1993 in the Mostar area. In many cases, people were expelled from their homes and apartments by HVO soldiers, loaded on buses, and taken to a detention center. The evictions and arrests appear to have been ordered by the HVO military police in Mostar. Similar evictions and arrests also took place in the Stolac area in April 1993. Those arrested were detained at the heliobrome in Rodoč, on the outskirts of Mostar, and approximately 400 were held in a football stadium in the Velež section of Mostar. Some of those arrested in May were interrogated to determine whether they belonged to the Bosnian Army. To the best of Human Rights Watch/Helsinki's knowledge, no one was charged with a crime and the vast majority of those detained were civilians. Most women and children, and some elderly men, were released after two to three days in detention. Some men between the ages of fifty and sixty, and some younger men, were released after ten days. Other men of military age and some teenagers remained incarcerated, while others either were released unconditionally or had been exchanged for Croatian prisoners of war and civilians held by Muslim forces.

In late June 1993, during a battle which led to defeat for the Bosnian Croats, after Muslim conscripts in the HVO mutinied and joined the

25. 1977 ICRC Commentary, *supra* note 23, at 874.

Bosnian Army, a second wave of HVO arrests of Muslims took place throughout Croatian-controlled western Herzegovina. Most of those detained in May and thereafter were imprisoned in detention centers at the Rodoč heliodyne, and in the villages of Gabela and Dretelj in the Čapljina area.²⁶

B. BY BOSNIAN GOVERNMENT AND MUSLIM TROOPS

A Bosnian government offensive in June 1993, and subsequent fighting between Muslims and Croats in central Bosnia, forced the displacement of Croats living in the area. Bosnian Croat officials estimate that over 120,000 Croats were displaced as a result of the fighting with Bosnian government forces. In the villages surrounding the town of Travnik and in several other places, HVO forces organized the evacuation of the Croatian population when they could no longer retain control over a village or town.

Although the HVO organized the evacuation of Croatian civilians from some areas of conflict, Human Rights Watch/Helsinki has documented cases in which Croatian civilians have been forcibly expelled from their homes by Muslim irregular and Bosnian government forces. According to N.M., a woman from the city of Travnik, Muslim troops forcibly entered her apartment six times. On one occasion, they ransacked her apartment. On another, they demanded the keys to her apartment and ordered her and her husband to leave immediately. The couple fled to their neighbor's house and called the police to report the break-in. The police said that they would send a patrol, but no one arrived. The couple called the police a second time and were told again that a patrol would be dispatched, but the police never arrived. The couple chose to flee Travnik, fearing for their lives. The woman claimed that four Croatian families living in her apartment building were all expelled in a similar fashion.

On the basis of interviews conducted with displaced Croats, United Nations relief personnel, and foreign journalists, Human Rights Watch/Helsinki has reason to believe that Croats in parts of the Muslim-controlled municipalities of Konjic and Jablanica had been arbitrarily arrested, detained, and harassed by Muslim military and civilian authorities.²⁷

IV. MISTREATMENT IN DETENTION

Article 75(2) of Geneva Protocol I states:

26. *Abuses*, *supra* note 5, at 3-4. For an account of the conditions in these detention camps, see *infra* part IV. A-B.

27. *Abuses*, *supra* note 5, at 13-14.

The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:

- (a) violence to life, health, or physical or mental well-being of persons, in particular:
 - (i) murder;
 - (ii) torture of all kinds, whether physical or mental;
 - (iii) corporal punishments; and
 - (iv) mutilation;
- (b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;
- (c) the taking of hostages;
- (d) collective punishments; and
- (e) threats to commit any of the foregoing acts.²⁸

Also, Article 147 of the Fourth Geneva Convention states:

Grave breaches . . . shall be those involving any of the following acts, if committed against persons or property protected by the present Convention [i.e., civilian persons]: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.²⁹

“Protected persons” are defined by Article 4 of the Fourth Geneva Convention as:

those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.³⁰

28. Geneva Protocol I, *supra* note 6, art. 75(2), 1125 U.N.T.S. at 37.

29. Fourth Geneva Convention, *supra* note 7, art. 147, 6 U.S.T. at 3618, 75 U.N.T.S. at 388.

30. *Id.* at art. 4, 6. U.S.T. at 3520, 75 U.N.T.S. at 290.

Further, Article 11 sections (1) and (2) of Geneva Protocol I state that "physical mutilations" shall not be carried out on "persons who are in the power of the adverse Party and who are interned, detained or otherwise deprived of liberty" as a result of an international armed conflict.³¹

The Third Geneva Convention regulates the treatment of prisoners of war and forbids the use of their labor along the battle line. As Article 23 of the Third Geneva Convention states, "[n]o prisoner of war may at any time be sent to, or detained in areas where he may be exposed to the fire of the combat zone."³²

Although Articles 49 to 57 of the Third Geneva Convention allow for the employment of prisoners of war, they stipulate the types of work which are permitted and the conditions under which a prisoner can be required or permitted to work. Article 50 sections (b) and (c) allow for prisoners to work in public works and building operations, transport and handling of stores, and public utility services, provided this type of work is not "military in character or purpose."³³ The 1960 ICRC Commentary clarifies that stipulation by stating:

everything which is commanded and regulated by the military authority is of a military character, in contrast to what is commanded and regulated by the civil authorities.³⁴

The 1960 ICRC Commentary further states, "for reasons of safety, prisoners should not be assembled in the neighborhood of key military objectives."³⁵

Additionally, dangerous or humiliating labor is prohibited under Article 52 of the Third Geneva Convention, which states, "[u]nless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature."³⁶ Digging trenches along the front lines of battle is military in character and purpose. Using prisoners of war to dig trenches along the front lines exposes them to the direct line of fire in the combat zone, thereby endangering their safety. Therefore, it is forbidden to employ prisoners of war in this capacity.

Rape and sexual abuse also constitute violations of international human rights standards and humanitarian law. Article 147 of the Fourth Geneva

31. Geneva Protocol I, *supra* note 6, arts. 11(1)-(2), 1125 U.N.T.S. at 11-12.

32. Third Geneva Convention, *supra* note 8, art. 23, 6 U.S.T. at 3336, 75 U.N.T.S. at 154.

33. *Id.* at arts. 49-57, 6 U.S.T. at 3354, 75 U.N.T.S. at 172.

34. Commentary to Geneva Convention on the Treatment of Prisoners of War, International Committee of the Red Cross, at 267 [hereinafter 1960 ICRC Commentary].

35. *Id.* at 269.

36. Third Geneva Convention, *supra* note 8, art. 52, 6 U.S.T. at 3356, 75 U.N.T.S. at 174.

Convention specifies that "torture or inhuman treatment" and "wilfully causing great suffering or serious injury to body or health" are "grave breaches" and hence judicially actionable war crimes.³⁷ The 1977 ICRC Commentary explains that "'inhuman treatment' . . . does not mean only physical injury or injury to health. Certain measures . . . which caused grave injury to [a person's] human dignity, could conceivably be considered as inhuman treatment."³⁸ The 1977 ICRC Commentary also notes that the scope of the phrase "wilfully causing great suffering" can encompass "punishment, in revenge or for some other motive, perhaps out of pure sadism . . . [that] can quite legitimately be held to cover moral suffering also."³⁹ Since in the view of the ICRC "moral suffering" is covered by "inhuman treatment," it is axiomatic that rape is also covered. Moreover, Article 27 of the Fourth Geneva Convention calls for the protection of women "against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault."⁴⁰ Further, Article 76 (1) of Geneva Protocol I states that women "shall be protected in particular against rape, forced prostitution and any other form of indecent assault."⁴¹ This language makes it clear that rape constitutes both a grave breach of the Convention and a violation of several explicit prohibitions.

Rape — like murder, extermination, deportation, and other equally serious crimes — can be a constituent crime against humanity, as that term was defined at the Nuremberg trial and in Article 6(c) of the Nuremberg Charter, provided that it is part of a mass pattern of such crimes and other definitional elements are met.⁴² Rape was specifically enumerated in the second set of Nuremberg war criminal trials, conducted under the authority of Control Council Law No. 10, which named with greater specificity the constituent crimes falling within crimes against humanity.⁴³

Rape can also be one of the crimes used as a means of carrying out genocide, although rape does not by itself constitute genocide, even when it is committed on a mass basis. Nevertheless, the status of rape as a war crime in international humanitarian law and the ability to prosecute it is not at issue.

37. Fourth Geneva Convention, *supra* note 7, art. 147, 6 U.S.T. at 3618, 75 U.N.T.S. at 388.

38. 1977 ICRC Commentary, *supra* note 23, at 598-99.

39. *Id.*

40. Fourth Geneva Convention, *supra* note 7, art. 27, 6 U.S.T. at 3536, 75 U.N.T.S. at 306.

41. Geneva Protocol I, *supra* note 6, art. 76(1), 1125 U.N.T.S. at 38.

42. Charter of the International Military Tribunal, art. 6(c), 59 Stat. 1546, 1547, E.A.S. No. 472, 82 U.N.T.S. 284 (1945).

43. See generally Diane F. Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 YALE L.J. 2537 (1991).

Under Article 85(4)(c) of Geneva Protocol I, "inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination"⁴⁴ — an applicable provision, given the ethnic character of this conflict — are also "grave breaches" and hence judicially actionable war crimes. Article 86(2) of Geneva Protocol I makes commanders who had information about such crimes personally subject to punishment "if they did not take all feasible measures within their power to prevent or suppress" a grave breach.⁴⁵

All parties to the Bosnian conflict have regularly mistreated prisoners in their custody, particularly men between the ages of eighteen and fifty-five who are capable of serving in the military. In cases where international observers have intervened, Bosnian Croat and Muslim forces have taken steps to improve the conditions and treatment in their respective detention camps and prisons. Most persons detained by Bosnian Croat and Muslim forces were released after the two groups reconciled in March 1994.

A. BY BOSNIAN CROAT FORCES

After the first round of HVO-organized arrests in May 1993, the ICRC and other international observers were allowed to visit Muslim detainees in the Rodoč heliodrome. However, the HVO denied access to the ICRC and other relief agencies shortly thereafter. Negotiations to allow the ICRC to visit the HVO-controlled detention facilities commenced in late June, and only in August and early September 1993 was the ICRC given access to detention facilities in the Čapljina and Mostar areas.

Between December 13 and 29, 1993, under the auspices of the ICRC, the HVO released approximately 1,900 prisoners from detention camps in the villages of Gabela, Dretelj, and Rodoč. Approximately 1,250 prisoners were permitted to leave for the Muslim-controlled area of Mostar, 240 were taken by the United Nations Protection Force (UNPROFOR) to the Muslim-controlled town of Jablanica, and approximately 100 chose to remain in the Croat-controlled section of Mostar. Although not monitored by international observers, the ICRC believes that the HVO released an additional 500 Muslim prisoners who crossed over to the Muslim-controlled area of Mostar. Following the release of prisoners in late December, the HVO closed the Gabela and Dretelj detention camps, and approximately 1,000 prisoners remained interned at Rodoč. The HVO also maintained several smaller prisons in other parts of Herzegovina and central Bosnia, some of which were visited by the ICRC.⁴⁶ However, after the establish-

44. Geneva Protocol I, *supra* note 6, art. 85(4)(c), 1125 U.N.T.S. at 42.

45. *Id.* at art. 86(2), 1125 U.N.T.S. at 43.

46. *Abuses*, *supra* note 5, at 4-6.

ment of the Muslim-Croat federation, both sides released prisoners belonging to the opposing party by April 1994.

The following description of the HVO-operated detention camps in Gabela, Dretelj, and Rodoč is based on visits by Human Rights Watch/Helsinki representatives during the summer of 1993.

- In August 1993, male detainees at the Rodoč heliodrome outside of Mostar were evidently overcrowded and malnourished.⁴⁷ Men were routinely taken to the front lines to dig trenches, fill sandbags, and attend to similar chores in the direct line of fire. Most of those taken to the front lines to work did so against their will. However, because they received larger portions of food when they labored, some prisoners told Human Rights Watch/Helsinki representatives that they volunteered to work along the front line because they were hungry. According to the prisoners, at least four inmates had been wounded and two had been killed while working on the front lines between May and mid-August 1993.⁴⁸

- Although common criminals were detained in the prison, along with some HVO soldiers for breaches of discipline, most of those incarcerated were Muslim men between the ages of eighteen and sixty. Prisoners slept on beds or mattresses and were given blankets. Other prisoners were held in adjacent structures of the main building, including the classrooms and gym.⁴⁹

- Women prisoners also were held in the prison, but were separated from the men. The women were far fewer in number and appeared to be better treated than the men. Those women interviewed by Human Rights Watch/Helsinki representatives in August 1993 did not report having been mistreated in any way nor having witnessed other women being beaten or otherwise abused.⁵⁰ However, later reports indicate that some of the

47. This heliodrome was a former Yugoslavian Army training center and school for prospective pilots.

48. *Abuses*, *supra* note 5, at 5.

49. *Id.*

50. *Id.*

women prisoners might have been raped or sexually abused by HVO soldiers during their detention at Rodoč.⁵¹

The Gabela and Dretelj detention camps near Čapljina were sealed off to outside observers until August and early September 1993, respectively. Human Rights Watch/Helsinki was denied access to both camps when it requested permission to visit in August 1993. In early September, Bosnian Croat authorities released some prisoners and allowed foreign journalists, the ICRC, and others to visit the Gabela and Dretelj detention centers.

Bosnian Croat authorities told Human Rights Watch/Helsinki representatives that approximately 1,500 men were detained in each camp in August 1993. These officials admitted that conditions in the two detention facilities were not good and cited overcrowding as the main reason for the poor conditions.⁵²

While overcrowding was a serious problem, former detainees testified that prisoners were also physically abused. The former detainees claimed that those beaten in the camps were usually members of the Bosnian Army. Malnutrition and lack of hygiene also plagued both detention facilities.

- Former detainees from Dretelj, a former Yugoslav military logistics base, told Human Rights Watch/Helsinki representatives that they were fed one meal daily, which usually consisted of a small portion of rice, beans, or macaroni and a thin slice of bread. E.T., a 35-year-old driver from Čapljina, reported that his wife was allowed to bring him food while he was detained in Dretelj. In response to losses suffered by HVO forces in an area called Dubrave, prisoners in Dretelj were denied food and water between July 13 and 15, 1993. According to former detainees, the commander of the HVO military police in the area, Mr. Aničić, was in charge of the camp. Those interviewed by Human Rights Watch/Helsinki confirmed that conditions in Dretelj improved after Aničić was replaced in August 1993 by prison director Tomo Šakota. In particular, former inmates claimed that Šakota sought to prevent the beating of prisoners by HVO soldiers.⁵³

- A.M., a 26-year-old carpenter from Čapljina and a recently released detainee from the Gabela camp, also a

51. See Organisation Mondiale Contre la Torture, *Case HRV 181093*, Geneva, Oct. 18, 1993, and *Case HRV 181093.1: Follow-up of Case HRV 181093*, Oct. 21, 1993.

52. *Abuses*, *supra* note 5, at 5-6.

53. *Id.* at 6.

former Yugoslav Army logistics base, testified that prisoners were housed in three large storage sheds. A.M. claimed that twenty to thirty Bosnian Army soldiers were detained in the same shed with him, which housed approximately 650 prisoners. According to the former prisoner, the Bosnian Army soldiers were taken out of the shed, beaten, and subsequently returned to the hangar. The food served the prisoners in Gabela was similar to that served at the Rodoč heliodyrome and the Dretelj camp — a small portion of beans or something warm and a small slice of bread.⁵⁴

B. BY BOSNIAN GOVERNMENT AND MUSLIM TROOPS

As of January 3, 1994, the ICRC was aware of twenty-three detention facilities operated by Bosnian government forces. At that time, the ICRC knew that approximately 1,036 prisoners were detained in these facilities and had visited some of the detention areas.

- Croatian prisoners held by Muslim forces in the Muslim-controlled area of Mostar were forced to work on the front lines. According to a U.S. journalist who visited the Muslim-controlled side of the city in late August, Croatian prisoners were required to clean the Bosnian Army headquarters in the Hotel Ruža in Mostar, near the confrontation line with HVO forces. The bodies of three Croats, killed while working on the front line, lay in the morgue at the time of the journalist's visit.⁵⁵

- The sports hall in Konjic has long been a detention center operated by Bosnian Muslim soldiers. According to Dragan,⁵⁶ a 43-year-old former detainee interviewed by Human Rights Watch/Helsinki representatives, Croats from the Konjic area and Serbs who had been captured during fighting between Serbian forces in 1992 were imprisoned in the sports hall during his detention. According to Dragan, prisoners were beaten daily by guards. Usually, a person was taken from the room and beaten in an unlighted area. According to Dragan, prisoners were forced to dig trenches for Bosnian Army soldiers. Initially,

54. *Id.* at 7.

55. *Id.* at 15.

56. Because the witness asked that his identity not be disclosed, the name used here is a pseudonym.

prisoners were fed an eighth of a loaf of bread and some rice daily. Dragan claimed that half of a soldier's meal was used to feed eight prisoners. Later, family members who remained in the area were allowed to bring food to the prisoners.

Dragan also claimed that, on several occasions, prisoners were used as human shields to deter Croatian forces from firing on Muslim positions in the area. According to Dragan, once fighting between Muslim and Croatian forces commenced, Muslim forces took between twenty and one hundred prisoners from the sports hall and forced them to form a line, with their hands behind their heads, in the direct line of fire.

Dragan also claimed that, during the course of two days, blood was taken from between fifty and sixty prisoners in the Konjic sports hall. The prisoners did not volunteer to donate their blood. According to Dragan, a doctor and a medical technician took the blood from the inmates, but both appeared to be doing so under duress from the Muslim soldiers and guards.⁵⁷

V. OBSTRUCTION OF HUMANITARIAN AID

Attacking or harassing humanitarian and medical actions or personnel is prohibited under international law. With regard to relief actions and personnel, Articles 70 and 71 of the Geneva Protocol I state, in part:

1. If the civilian population of any territory under the control of a Party to the conflict, other than occupied territory, is not adequately provided with the . . . [basic needs of existence], relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken, subject to the agreement of the Parties concerned in such relief actions. Offers of such relief shall not be regarded as interference in the armed conflict or as unfriendly acts. . . .

2. The Parties to the conflict and each High Contracting Party shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel provided in accordance with this Section, even if such assistance is destined for the civilian population of the adverse Party.

57. *Abuses*, *supra* note 5, at 15.

3. The Parties to the conflict and each High Contracting Party which allow the passage of relief consignments, equipment and personnel in accordance with paragraph 2:

- (a) shall have the right to prescribe the technical arrangements, including search, under which such passage is permitted;
- (b) may make such permission conditional on the distribution of this assistance being made under the local supervision of a Protecting Power;
- (c) shall, in no way whatsoever, divert relief consignments from the purpose for which they are intended nor delay their forwarding, except in cases of urgent necessity in the interest of the civilian population concerned.

4. The Parties to the conflict shall protect relief consignments and facilitate their rapid distribution.

. . .

1. Where necessary, relief personnel may form part of the assistance provided in any relief action, in particular for the transportation and distribution of relief consignments; the participation of such personnel shall be subject to the approval of the Party in whose territory they will carry out their duties.

2. Such personnel shall be respected and protected.⁵⁸

With regard to medical actions and personnel, Articles 12 and 13 of Protocol I state, in part:

1. Medical units shall be respected and protected at all times and shall not be the object of attack.

. . .

4. Under no circumstances shall medical units be used in an attempt to shield military objectives from attack.

. . .

58. Geneva Protocol I, *supra* note 6, arts. 70-71, 1125 U.N.T.S. at 35-36.

1. The protection to which civilian medical units are entitled shall not cease unless they are used to commit, outside their humanitarian function, acts harmful to the enemy. . . .
2. The following shall not be considered acts harmful to the enemy:
 - (a) that the personnel of the unit are equipped with light individual weapons for their own defence or for that of the wounded and sick in their charge;
 - (b) that the unit is guarded by a picket or by sentries or by an escort;
 - (c) that small arms and ammunition taken from the wounded and sick, and not yet handed to the proper service, are found in the units;
 - (d) that members of the armed forces or other combatants are in the unit for medical reasons.⁵⁹

All parties to the conflict have prevented or obstructed the delivery of humanitarian aid to the population which remained in enemy territory. Medical evacuation of the sick and wounded also has been obstructed by all sides. While Bosnian Serb forces have most frequently prevented aid from transiting territory under their control in eastern Bosnia, Bosnian Croat forces have prevented aid from reaching Muslim-controlled areas of central Bosnia. Similarly, Bosnian government and Muslim forces have blocked the delivery of humanitarian aid to Croats encircled in a handful of pockets in central Bosnia.

A. BY BOSNIAN CROAT FORCES

During the summer of 1993, the Bosnian Croat authorities refused to allow humanitarian aid to reach the Muslim-controlled side of Mostar for over two months. A spokesperson for the Spanish battalion of the UNPROFOR mission in Medjugorje told Human Rights Watch/Helsinki representatives that Bosnian Croat authorities blocked relief supplies from entering the Muslim-controlled area of Mostar as an act of retaliation against the Bosnian Army. The Bosnian Army had refused to allow HVO helicopters to evacuate Croats in serious need of medical care from a makeshift hospital in the besieged Croatian-controlled village of Nova Bila near Travnik and Vitez. However, the obstruction of aid to one side by a party to the conflict does not give the other party the right to deny aid in return.⁶⁰

59. *Id.* at arts. 12, 13, 1125 U.N.T.S. at 12-13.

60. *Abuses*, *supra* note 5, at 7.

On August 21, 1993, United Nations officials delivered one truckload of medicine to the Muslim-controlled sector of Mostar. On August 25, the United States began air-dropping aid to the Muslim-held area of the city. Finally, on August 26, Bosnian Croat authorities allowed a convoy of humanitarian aid to reach the Muslim quarter of Mostar, but not without long delays. A demonstration by displaced Croats from central Bosnia appeared to have been organized by the Bosnian Croat authorities to harass the United Nations convoy carrying aid to the Muslims.⁶¹ Also, United Nations vehicles were searched for weapons in an apparent effort to delay the convoy.⁶²

Since August 1993, Bosnian Croat officials have allowed aid to enter the Muslim-controlled section of Mostar, although HVO troops intermittently have obstructed the delivery of aid. Bosnian Croat forces also have shot and killed, or wounded, civilians trying to obtain water from a river in the Muslim-controlled section of Mostar.⁶³

On June 10, 1993, HVO forces near Novi Travnik halted a 450-truck relief convoy taking supplies to the majority Muslim town of Tuzla. The HVO attacked the convoy and shot seven Muslim drivers, reportedly in revenge for the recent capture of Travnik by Bosnian Army forces. The following day, HVO forces attacked the convoy again, killing two Muslim drivers, one at close range. Approximately thirty other Muslim drivers were captured and the convoy was plundered.⁶⁴

B. BY BOSNIAN GOVERNMENT AND MUSLIM TROOPS

The Croatian-controlled village of Nova Bila, situated between Travnik and Vitez, was encircled and besieged by Bosnian Muslim forces for months. A makeshift hospital was established in the basement of a Franciscan monastery in Nova Bila to treat wounded civilians and combatants. Bosnian Muslim forces frequently prevented humanitarian aid from reaching the village and refused to allow the evacuation of patients from the Nova Bila hospital. HVO forces claimed that their refusal to allow humanitarian aid to reach the Muslim-controlled side of Mostar was in retaliation for the Muslim blockade of Nova Bila.⁶⁵

In early September 1993, after Bosnian Croat forces allowed humanitarian aid to reach the Muslim-held area of Mostar, Bosnian government troops allowed medical evacuations from the Nova Bila hospital. However,

61. John Pomfret, *U.N. Trucks Deliver Food to Mostar's Muslim Ghetto; Shell-Shattered, Hungry Enclave Also Gets Airdrops*, WASH. POST, Aug. 26, 1993, at A18.

62. *Id.*

63. *Abuses*, *supra* note 5, at 8.

64. *Bosnia-Herzegovina: Civilian Casualties Mount as War Rages On*, AMNESTY INT'L NEWSL., Aug. 1993.

65. *Abuses*, *supra* note 5, at 16.

in December 1993, an UNPROFOR-escorted, 78-truck convoy carrying aid to Nova Bila was attacked and looted en route in the town of Gornji Vakuf. When the convoy finally reached Nova Bila, entrance into the village and the distribution of aid was obstructed by Bosnian Army troops. When leaving the area, the convoy was attacked once more. A driver was killed, five people were wounded and some of the convoy's vehicles were confiscated by Bosnian Army soldiers.

VI. OTHER ABUSES

According to Article 147 of the Fourth Geneva Convention, "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" is considered a "grave breach" of the Geneva Conventions of 1949.⁶⁶ Customary international law, as well as the Geneva Conventions and their Protocols, expressly recognize that civilians and civilian objects may not be the direct object of attack, although damage may occur among civilians and civilian objects collateral to a legitimate attack against military targets.⁶⁷ Despite these legal guarantees, looting property and shooting at civilians and non-military targets are pervasive practices throughout Bosnia-Herzegovina.

A. BY BOSNIAN CROATS

Bosnian Croat forces have destroyed and looted Muslim property in areas under their control. Harassment of Muslim residents and displaced persons housed in shelters was particularly acute in Čapljina and Posušje (in western Herzegovina) in 1993. Croats, displaced from central Bosnia by Bosnian Army forces, have forcibly evicted Muslims living in western Herzegovina and have moved into their homes with the apparent acquiescence of the Bosnian Croat authorities.

To a certain extent, the level of violence against Muslims in areas that were not under attack by Bosnian Croat forces depended on the willingness of the local authorities to impose law and order. According to United Nations field personnel, the local authorities in Ljubuški and Tomislavgrad have made efforts to protect local Muslim populations, whereas those in Čapljina and Mostar exacerbated and sought to create tensions between

66. Fourth Geneva Convention, *supra* note 7, art. 147, 6 U.S.T. at 3618, 75 U.N.T.S. at 388.

67. An elaborate legal regime governs the use of force affecting non-combatants in times of war. For a more detailed explanation of the relevant laws, see WATCH REPORT, VOL. I, *supra* note 2, at 203-19. See also *Respect for Human Rights in Armed Conflicts*, G.A. Res. 2444, 23 U.N. GAOR Supp. (No. 18), at 50, 164, U.N. Doc. A/7433 (1968); Geneva Protocol I, *supra* note 6, arts. 48, 50, 51(2), 52, 53, 1125 U.N.T.S. at 25-27 (prohibiting attacks against civilians or cultural property and defining the principle of proportionality, which places a duty on combatants to choose means of attack that avoid or minimize damage to civilians).

Croats and Muslims in both municipalities.⁶⁸ (It should be noted that during recent efforts by the local Bosnian Croat authorities in Čapljina to expel Muslims from the area, local Croats defended their Muslim neighbors and prevented their expulsion. The local authorities who sought to expel the Muslims reportedly apologized to the town's population thereafter.)

B. BY BOSNIAN GOVERNMENT AND MUSLIM TROOPS

According to testimony taken by Human Rights Watch/Helsinki, Muslim and Bosnian government forces shot at individuals and columns of civilians as they fled from the villages around Travnik, from the village of Doljani in the Jablanica municipality, and from the village of Donje Selo in the Konjic municipality. Muslim forces also have burned and looted villages near Konjic, particularly in and around the area known as Klis.⁶⁹

VII. THE CROATIAN GOVERNMENT'S ROLE IN HUMAN RIGHTS ABUSES IN BOSNIA-HERZEGOVINA

During the summer of 1993, the Croatian government aided Bosnian Croat authorities in the forcible displacement and arbitrary arrest of Muslims in western Herzegovina. Hundreds of men were released from detention centers in western Herzegovina and taken to the Republic of Croatia by HVO forces. The Croatian government accepted the Muslim former detainees and most remained in refugee camps in Croatia. However, the Croatian government did not grant the former detainees refugee status. Rather, the former detainees were granted temporary transit visas which required that they leave Croatia by a given date. Because most Muslims feared returning to HVO-controlled areas of Bosnia and because they had neither refugee nor legal residency status in Croatia, the former detainees were forced to travel to third countries. Such policies by the Bosnian Croat authorities and the Croatian government forced the flight of Muslims from Croatian-controlled areas of Bosnia and Croatia.

The government of the Republic of Croatia has also forcibly repatriated (or "refouled") Bosnian Muslims and Croats who sought refuge or were deported to Croatia. Those who were not registered as refugees, whose refugee status had expired, and in some cases those with orderly refugee status typically were refouled to western Herzegovina. Bosnian Croats were then forced to join the HVO forces and Bosnian Muslims were imprisoned.⁷⁰

68. *Abuses*, *supra* note 5, at 9.

69. *Id.* at 16.

70. *Id.* at 9-10.

VIII. EFFORTS TO RECTIFY ABUSES AND ENSURE ACCOUNTABILITY FOR CRIMES

On September 14, 1993, Croatian President Franjo Tudjman and Bosnian President Alija Izetbegović signed an agreement to release prisoners and safeguard human rights. Some prisoners were released or exchanged by each side after the agreement was signed, but Bosnian Croat and Muslim forces did not cease their abusive behavior until March 1994, when the two groups agreed to form a federation within Bosnia and resume their past alliance. Despite a decrease in human rights abuses in Bosnian Croat- and Muslim-controlled areas of southwestern and central Bosnia, those responsible for abuses during the Muslim-Croat conflict in 1993 have not been brought to justice.⁷¹

Of the three major military forces fighting in Bosnia, the HVO is arguably the most disorganized and has the weakest chain of command. Banditry is rife and it is not uncommon for a soldier to disregard the written command of his superiors. Nevertheless, the government of the Republic of Croatia is sensitive, and in some cases has responded, to international criticism of its human rights record and the record of the Bosnian Croats it supports. Accordingly, the Croatian government has taken some steps to force the Bosnian Croats to correct behavior which violates human rights and humanitarian law.

Following international condemnation of conditions in HVO-operated detention camps, Croatian President Franjo Tudjman appealed to then-Bosnian Croat leader Mate Boban "to do all that is necessary . . . to immediately ensure humane treatment of all detainees in the [HVO-controlled] detention camps," to allow the ICRC access to such camps, and to allow free passage of all convoys delivering humanitarian aid.⁷² After international observers were permitted to visit the facilities, conditions in the HVO-operated Rodoč, Gabela, and Dretelj detention camps improved. The latter two facilities were eventually closed.

Despite these improvements, the HVO command has done little to bring to justice those responsible for atrocities, such as those perpetrated in the villages of Ahmići and Stupni Do. A report by United Nations Special Rapporteur Tadeusz Mazowiecki strongly implicates HVO soldiers, local to the Vitez area, for the crimes perpetrated in Ahmići.⁷³ However, no one has been brought to justice for the massacre, which appears to have

71. *Id.* at 2.

72. AMNESTY INT'L NEWSL., *supra* note 64. See also Letter to Mate Boban from Croatian President Franjo Tudjman, Zagreb (Sept. 6, 1993) (copy on file with author).

73. U.N. Report on Human Rights in Former Yugoslavia, *supra* note 10, at 6.

been premeditated and organized.⁷⁴ Similarly, United Nations officials claim that members of the then Vareš-based⁷⁵ Bobovac Brigade of the HVO were responsible for the killings in Stupni Do. According to the United Nations, Ivica Rajić, special forces commander from Kiseljak, and Krešimir Božić, the de facto head of the Bobovac Brigade at the time of the massacre, bear responsibility for the atrocities in Stupni Do.⁷⁶

In addition to its pronouncements and limited pressure, the government of the Republic of Croatia — which supplies economic, political, and military support to the Bosnian Croats — should exert stronger and continued pressure on the Bosnian Croat military and civilian authorities to ensure their compliance with international law. The Croatian government also must demand accountability for crimes perpetrated by HVO soldiers in Bosnia. Moreover, the Croatian government must improve its own human rights record by ceasing all efforts aimed at forcibly repatriating refugees to Bosnia-Herzegovina.

The Bosnian government has taken some steps to punish those responsible for human rights violations committed by some of its troops. The Bosnian army soldier responsible for the murder of a Catholic priest in Fojnica is in custody. The largest gangs responsible for serious abuses against Serbs, Croats, and Muslims in Sarajevo were arrested or killed in gun battles with the Bosnian army and police force after the Bosnian government sought to decrease crime in Sarajevo in October 1993. Despite these positive steps, the Bosnian government must still identify and prosecute those responsible for other serious war crimes perpetrated by its forces, particularly those relating to mistreatment in detention and summary execution. Accountability for past abuses is necessary to effect a lasting peace and rapprochement between Bosnia's Muslim and Croatian communities.

IX. CONCLUSIONS

The international community's indecisive and weak responses toward the egregious violations perpetrated in the name of "ethnic cleansing" by Bosnian Serb forces encouraged Bosnian Croat and Muslim forces to adopt similar practices. However, the recent rapprochement between the Bosnian Croats and Muslims has sought to redress, rather than reward, the effects of "ethnic cleansing." Although serious obstacles still need to be resolved

74. *See id.*

75. Muslim troops assumed control of Vareš from the HVO in November 1993.

76. Ron Nordland et al., "*Let's Kill the Muslims!*", NEWSWEEK, Nov. 8, 1993, at 48. Božić was promoted to colonel and appointed as commander of the Bobovac brigade four days after the Stupni Do massacre. However, according to United Nations relief workers, Božić was the de facto commander of the brigade at the time of the massacre. *See "The Whole World Will Know the Truth"*, NEWSWEEK, Nov. 8, 1993, at 51.

between Bosnia's Muslims and Croats, the recent rapprochement between the two groups is based on the principle of reconciliation and co-existence, hence the beginning of the reversal of "ethnic cleansing." Conversely, other peace initiatives in the Balkans have focused on consolidating territorial and ethnic division. The latter approach infers acceptance of "ethnic cleansing" in exchange for a cessation of armed conflict.

In regard to the war in Croatia and Bosnia, the international community has chosen to view human rights abuses as secondary in importance to negotiating and signing cease-fire and peace agreements — the vast majority of which have not been respected. However, the perpetration of human rights abuses is the principle weapon that has been used to wage this war. Unless these abuses are stopped and redressed, peace will not come to the Balkans for decades.

"Ethnic hatred" is the result and not the cause of the war in Bosnia-Herzegovina. The war in the former Yugoslavia is a war for territory in which "ethnic cleansing" is the primary weapon used to consolidate territorial gains. It is a tactic which has long been practiced throughout the world, but which has never been so fully in the public eye as in the past two and a half years in Bosnia. "Ethnic cleansing" has taken place in parts of Africa and Asia, but little public attention has been focused on violations in those areas. In Bosnia-Herzegovina, the world has watched, recorded, documented, and debated the violations taking place, but has done little to stop the abuses. Although probably unintentional, the international community's indecision and general inaction toward the Serbs' policy of "ethnic cleansing" — and later Croatian and Muslim efforts to adopt the policy — have set a dangerous precedent sanctioning the use of force for territorial acquisition and the use of "ethnic cleansing" to consolidate those territorial gains. Such a message violates the most fundamental principles of international humanitarian and customary law, and seriously damages the credibility of the United Nations and the international standards it has promulgated and is bound to uphold.